

Service Date: October 26, 2001

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of)	UTILITY DIVISION
Montana Power Company's Annual)	
Avoided Cost Compliance Filing –)	DOCKET NO. D2001.7.100
Schedule Nos. QFLT-1 and STPP-1)	ORDER NO. 6379

ORDER ON MOTION TO COMPEL
PROCEDURAL ORDER

On October 17, 2001 Colstrip Energy Limited Partnership (CELP) filed in this docket a Motion to Compel Discovery Against Montana Power Company (MPC) (Motion). CELP properly served the Motion on MPC. MPC was aware of the Motion, was aware that the Montana Public Service Commission (Commission) intended to address the Motion at its regular work sessions on Tuesday, October 23, 2001, and neither filed a written response to the Motion nor asked for additional time to do so. On October 19, 2001 MPC filed a “revised Annual Avoided Cost Compliance Filing.” The Commission has been told by its staff, based on staff conversations with MPC, that MPC considers the revised filing an effective response to the September 5, 2001 discovery served on MPC. The Commission has also been told by its staff, based on conversations with CELP, that CELP does not consider the revised filing an effective response.

The Commission has no comment at this time on the merits of the revised filing. To the extent the revised filing reflects an effort by MPC to work out, and perhaps settle, disputed issues with CELP, the Commission supports such efforts. However, procedurally the revised filing is highly unusual. It was not contemplated by the Notice of Commission Action, October 11, 2001, wherein the Commission memorialized its decision to convert this docket from a complaint to a normal contested case, nor apparently was it contemplated by CELP or Commission staff. What has been contemplated is the completion of MPC's answers to CELP's discovery so that a procedural schedule can be set and the docket can move forward either to hearing or settlement.

Therefore, the Commission grants CELP's Motion to Compel and orders MPC to fully and completely respond to CELP's discovery by Friday, October 26, 2001. If MPC thinks that

answers to CELP's discovery are contained in the revised filing it can so indicate with specific reference to language or location in the revised filing. October 26, 2001 is a reasonable deadline. MPC was at one time apparently comfortable answering the discovery on October 5, 2001. Even if MPC's communications in this docket can be interpreted as requesting two additional weeks to respond, the deadline would have been October 19, 2001. MPC was aware of the Motion to Compel on October 18, 2001, and thus has had ample notice that the Commission may issue this order.

Therefore, based on the October 26, 2001 deadline, the Commission issues the following procedural order and schedule.

Procedural Order

Commission staff, pursuant to delegated authority, issues this procedural order to govern the schedule and other procedural matters in this docket.

Introduction and Background

1. On July 30, 2001 MPC filed its annual avoided cost compliance filing, update of Schedule Nos. QFLT-1 and STPP-1. The filing was given Docket No. N2001.7.100. On August 17, 2001 CELP filed a complaint against MPC over MPC's avoided cost compliance filing. The complaint was noticed (September 7, 2001) and given Docket No. D2001.8.109. MPC filed an answer to the complaint on September 20, 2001.

2. After discussion with MPC and CELP staff concluded that the best way to address CELP's concerns over MPC's filing was through the Commission's normal contested case process rather than a complaint. Therefore, on October 9, 2001 the Commission closed Docket No. D2001.8.109, converted Docket No. N2001.7.100 to D2001.7.100, and granted CELP intervenor status in Docket No. D2001.7.100 (NCA, October 11, 2001). MPC's avoided cost compliance filing was noticed on the Commission's Utility Division Agenda on October 10, 2001. There has been no response to the Notice.

Intervention

3. In this order the term "parties" includes MPC and CELP. Further requests to intervene must demonstrate standing and good cause, must contain a statement that intervention will not delay the procedural schedule, and will be granted by Commission action only.

Service and Filing

4. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and all other documents shall be filed with the Commission and served on all parties and other entities and individuals on the attached service list. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record.

5. Except for objections to discovery, and responses to objections to discovery, discussed below, filing by means of telephonic facsimile will not suffice for timely filing. Filing and service deadlines are the dates set for filing of the requisite number of paper copies in the offices of the Commission.

6. An original and nine (9) copies of all discovery and other documents, except proprietary documents, must be filed with the PSC. Only one copy of proprietary documents shall be filed -- on yellow paper.

Schedule

7. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

Discovery

8. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

9. The Commission directs all parties to prepare data requests according to the following guidelines:

a. Parties must assign their data requests a request number (e.g., MPC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through -008 to MPC, and PSC-009 through -016 to CELP).

b. All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects.

Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

c. Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

d. Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts

Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass

Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

10. The party receiving the written discovery or data request has three business days from receipt to file any objections it has to the request(s). Responses to objections may be made within three business days of the objections. Objections and responses shall be served by facsimile transmission (fax) or hand delivery upon the Commission and all parties, followed by mail delivery postmarked within the three business days. Parties shall notify each other and the Commission by phone (leaving a message is acceptable) of the imminent arrival of objections and responses by fax. The Commission will dispose of objections by prompt ruling or may schedule argument. Failure to timely object constitutes a waiver of objections.

11. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) by fax within three business days after receipt of such response. Responses to objections may be made within three business days of the objections. Service and notice must be as indicated in paragraph 9. The PSC will dispose of such objection(s) by prompt ruling, or may schedule argument. The

PSC will act either to sustain or overrule the objection(s), and, if sustaining, set a deadline for a satisfactory response.

12. The timelines for objections and resolving objections are tight. Therefore, it is imperative that parties attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of any requests and responses.

13. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause explaining why the request was not submitted within the time period allowed.

14. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof.

15. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. *See* ARM 38.2.3301 through 38.2.3305.

Testimony and Evidence

16. By October 26, 2001 MPC will identify a witness who will adopt the July 31, 2001 filing as if it were prefiled testimony. The PSC contemplates a complete identification of issues before the hearing. The PSC will closely scrutinize new issues or data in new areas introduced at the time of hearing, and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

17. At hearing, the PSC will admit into the record all prefiled direct (including MPC's July 31, 2001 filing adopted as prefiled direct), answer and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. This testimony will be an exhibit and not otherwise entered into the transcript.

18. All proposed exhibits and prefiled written testimony shall be marked for the purpose of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

19. When cross-examination is based on a document not previously filed with the Commission, copies of the document will be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter. Copies of data responses to be introduced into the record do not have to be made available at the hearing for Commissioners, Commission staff and other parties, except when there is an objection to introduction indicated in the prehearing memorandum.

20. Parties may be permitted to present live rebuttal testimony only by leave of the PSC or presiding officer.

21. The Montana Rules of Evidence in effect at the time of the hearing will apply.

22. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, *see* Rule 32, M.R.Civ.P. regarding admission of depositions).

Prehearing Motions and Conferences

23. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

24. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents,

distribution and marking of written testimony and exhibits prior to the hearing, and other procedural matters as may aid in the disposition of the proceeding.

25. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of MPC or other regulated utilities at any time.

Prehearing Memoranda

26. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this Docket on or before January 4, 2002, containing the following information:

- a. Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;
- b. The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c. The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memoranda:

- d. Witnesses the party will call to testify;
- e. A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- f. A proposed order of cross-examination; and
- g. Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Objection to the Introduction of Evidence

27. By January 8, 2002 each party shall file any objections to the introduction of evidence listed in the prehearing memoranda. Objections must be accompanied by a short supporting argument. By January 11, 2002 responses to objections may be filed.

Amendment

28. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

DONE AND DATED this 23rd day of October, 2001, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

The original signed copy of this order is on file at the Commission's office.

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806

ATTACHMENT "A"

Procedural Schedule**Docket No. D2001.7.100, Order No. 6379**

<u>Deadline*</u>	<u>Action</u>
July 31, 2001	MPC Filing
September 5, 2001	CELP Discovery (data request)
October 26, 2001	MPC Answers
November 16, 2001	CELP Answer Testimony
November 26, 2001	MPC Discovery
December 7, 2001	CELP Answers
December 21, 2001	MPC Rebuttal Testimony
December 28, 2001	Discovery on Rebuttal
January 4, 2002	Prehearing Motions
January 17, 2002	Hearing (Tentative Date)

*All deadlines are receipt dates.